

GREGORY G. KATSAS
Acting Assistant Attorney General
JOSEPH P. RUSSONIELLO
United States Attorney
ELIZABETH J. SHAPIRO
Assistant Branch Director
JOEL McELVAIN, DC Bar No. 448431
Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, DC 20001
Telephone: (202) 514-2988
Fax: (202) 616-8202
Email: Joel.McElvain@usdoj.gov

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

HABEAS CORPUS RESOURCE CENTER,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
JUSTICE and MICHAEL B. MUKASEY,**
in his official capacity as Attorney General of
the United States,

Defendants.

Case No. C 08-02649 CW

**Notice of Motion, and Motion
for Extension of Time for the
Defendants to Respond to the
Complaint**

Case Management Conference Set
for Sept. 2, 2008 at 2:00 p.m.

NOTICE is hereby given of the filing of this motion pursuant to Civil Local Rules 6-3 and 7-11 by the Defendants, the United States Department of Justice and Michael B. Mukasey, in his official capacity as Attorney General of the United States. This motion seeks an extension of the time in which the Defendants may respond to the complaint, from the current deadline of July 28, 2008, to and including August 18, 2008. Pursuant to Civil Local Rules 6-3 and 7-11, the undersigned counsel for the Defendants certifies that he has conferred with counsel for the Plaintiff, the Habeas Corpus Resource Center, and

1 that counsel for the Plaintiff opposes the granting of this motion. In support of this
 2 motion, the Defendants are filing the Declaration of Joel McElvain.

3 Discussion

4 The facts supporting this motion for an extension of time are as follows:

- 5 1. The Plaintiff filed its complaint in this action on May 27, 2008.
- 6 2. The Plaintiff served a copy of the summons and the complaint on the United
 7 States Attorney for the Northern District of California on May 27, 2008.
- 8 3. The undersigned counsel received a copy of the complaint, and was assigned
 9 primary responsibility for the representation of the Defendants in this action, on June 19,
 10 2008.
- 11 4. A response to the complaint is due to be filed on or before July 28, 2008, which
 12 is the first business day after the sixtieth day following the date of service of the summons
 13 and complaint. *See* Fed. R. Civ. P. 12(a)(2).¹
- 14 5. The docket sheet for this action reflects that a responsive pleading is currently
 15 due to be filed on or before August 11, 2008. For the reasons stated above, this
 16 calculation appears to be in error.
- 17 6. The undersigned counsel for the Defendants will be out of the office, on
 18 previously-scheduled leave, from July 21, 2008, until August 11, 2008.

22
 23 ¹ The complaint purports to raise causes of action both under the Administrative
 24 Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, and under the Freedom of Information Act
 25 (FOIA), 5 U.S.C. § 552. A responsive pleading in an action under the APA is due 60
 26 days after service upon the United States Attorney. *See* Fed. R. Civ. P. 12(a)(2). A
 27 responsive pleading in a FOIA action is due 30 days after service. *See* 5 U.S.C.
 28 § 552(a)(4)(C). It would be appropriate for the Defendants not to be required to respond
 to the Complaint more than once, and accordingly this motion proposes a timeline in
 which the Defendants may prepare one pleading that responds to each of the complaint's
 purported causes of action.

1 7. An extension of twenty-one days, to and including August 18, 2008, would
2 afford counsel for the Defendants one week following his return from leave to complete
3 the preparation of a pleading in response to the complaint.

4 8. Absent an extension, the Defendants would suffer substantial prejudice, due to
5 the unavailability of their counsel during the time in which a responsive pleading would
6 ordinarily be due.

7 9. The undersigned counsel contacted Barbara Saavedra, counsel for the Plaintiff,
8 by telephone on June 20, 2008, and again on June 24, 2008. On June 24, 2008, Ms.
9 Saavedra informed the undersigned counsel that the Plaintiff would oppose this motion
10 for an extension.

11 10. The deadline for the Defendants' pleading in response to the complaint has not
12 previously been extended by stipulation or by Court order.

13 11. An extension of the time in which the Defendants may respond to the
14 complaint will require a brief extension of the other deadlines established in this Court's
15 order of May 27, 2008 (Doc. 3). The proposed order accompanying this motion includes
16 a set of proposed modifications to that order.
17
18
19
20
21
22
23
24
25
26
27
28

Conclusion

For the foregoing reasons, the Defendants respectfully request that the Court grant them an extension of time, to and including August 18, 2008, in which to respond to the complaint.

Respectfully submitted,

GREGORY G. KATSAS
Acting Assistant Attorney General

JOSEPH P. RUSSONIELLO
United States Attorney

/s/ Joel McElvain
ELIZABETH J. SHAPIRO
Assistant Branch Director
JOEL McELVAIN
Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW
Washington, DC 20001
Telephone: (202) 514-2988
Fax: (202) 616-8202
Email: Joel.McElvain@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2008, I electronically filed the foregoing Notice of Motion and Motion for Extension of Time for the Defendants to Respond to the Complaint, with the accompanying Declaration of Joel McElvain and Proposed Order with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

/s/ Joel McElvain
JOEL McELVAIN

1 GREGORY G. KATSAS
 Acting Assistant Attorney General
 2 JOSEPH P. RUSSONIELLO
 United States Attorney
 3 ELIZABETH J. SHAPIRO
 Assistant Branch Director
 4 JOEL McELVAIN, DC Bar No. 448431
 Attorney
 5 U.S. Department of Justice
 Civil Division, Federal Programs Branch
 6 20 Massachusetts Ave., NW
 Washington, DC 20001
 7 Telephone: (202) 514-2988
 Fax: (202) 616-8202
 8 Email: Joel.McElvain@usdoj.gov

9 Attorneys for Defendants

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 (OAKLAND DIVISION)

12 **HABEAS CORPUS RESOURCE CENTER,**)

13 Plaintiff,)

14 v.)

15 **UNITED STATES DEPARTMENT OF**)
 16 **JUSTICE and MICHAEL B. MUKASEY,**)
 in his official capacity as Attorney General of)
 17 the United States,)

18 Defendants.)

Case No. C 08-02649 CW

Declaration of Joel McElvain

20 1. I am a trial attorney in the Federal Programs Branch of the Civil Division of the
 21 United States Department of Justice. The statements in this declaration are based on my
 22 personal knowledge.

23 2. I have been assigned the primary responsibility for the representation of the
 24 Defendants in this action.

25 3. The Plaintiff filed its complaint in this action on May 27, 2008.

26 4. The Plaintiff served a copy of the summons and the complaint on the United
 27 States Attorney for the Northern District of California on May 27, 2008.

1 5. The undersigned counsel received a copy of the complaint, and was assigned
2 primary responsibility for the representation of the Defendants in this action, on June 19,
3 2008.

4 6. A response to the complaint is due to be filed on or before July 28, 2008, which
5 is the first business day after the sixtieth day following the date of service of the summons
6 and complaint. *See* Fed. R. Civ. P. 12(a)(2).

7 7. The docket sheet for this action reflects that a responsive pleading is currently
8 due to be filed on or before August 11, 2008. For the reasons stated above, this
9 calculation appears to be in error.

10 8. The undersigned counsel for the Defendants will be out of the office, on
11 previously-scheduled leave, from July 21, 2008, until August 11, 2008.

12 9. An extension of twenty-one days, to and including August 18, 2008, would
13 afford counsel for the Defendants one week following his return from leave to complete
14 the preparation of a pleading in response to the complaint.

15 10. Absent an extension, the Defendants would suffer substantial prejudice, due to
16 the unavailability of their counsel during the time in which a responsive pleading would
17 ordinarily be due.

18 11. The undersigned counsel contacted Barbara Saavedra, counsel for the
19 Plaintiff, by telephone on June 20, 2008, and again on June 24, 2008. On June 24, 2008,
20 Ms. Saavedra informed the undersigned counsel that the Plaintiff would oppose this
21 motion for an extension.

22 12. The deadline for the Defendants' pleading in response to the complaint has not
23 previously been extended by stipulation or by Court order.

24 13. An extension of the time in which the Defendants may respond to the
25 complaint will require a brief extension of the other deadlines established in this Court's
26 order of May 27, 2008 (Doc. 3). The proposed order accompanying this motion includes
27 a set of proposed modifications to that order.
28

1 In accordance with 28 U.S.C. 1746, I declare and affirm under penalty of perjury
2 that the foregoing is true and correct.

3 Executed at Washington, District of Columbia, this 24th day of June, 2008.
4
5

6 /s/ Joel McElvain
7 JOEL McELVAIN
8 *Attorney*
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
(OAKLAND DIVISION)

HABEAS CORPUS RESOURCE CENTER,

Plaintiff,

v.

**UNITED STATES DEPARTMENT OF
JUSTICE and MICHAEL B. MUKASEY,**
in his official capacity as Attorney General of
the United States,

Defendants.

Case No. C 08-02649 CW

[Proposed] Order

Based upon the Motion for Extension of Time for the Defendants to Respond to the Complaint, and good cause having been shown, this Court's scheduling order of May 27, 2008 is hereby modified as follows:

| | |
|-----------------|---|
| August 18, 2008 | Deadline for the Defendants to respond to the Complaint |
| August 26, 2008 | Last day to: |
| | • meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan |
| | • file Joint ADR Certification with Stipulation to ADR Process or Notice of Need for ADR Phone Conference |
| Sept. 9, 2008 | Last day to file Rule 26(f) Report, complete initial disclosures or state objection in Rule 26(f) Report and file Case Management Statement per Standing Order re Contents of Joint Case Management Statement |

1 Sept. 16, 2008 INITIAL CASE MANAGEMENT CONFERENCE (CMC) in
2 Courtroom 2, Oakland at 2:00 p.m.

3 IT IS SO ORDERED.

4 Dated: _____

5 _____
6 Hon. CLAUDIA WILKEN
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28